



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC097

Fisheries of the United States; NOAA Fisheries Policy for Modifying Fisheries Closures in the Event of a Public Health Emergency or Oil Spill Characterized by Rapidly Changing Conditions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS issues this notice of availability (NOA) to provide background information and request public comment on potential adjustments to the draft policy.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0081, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0081](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0081), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Kimberly A. Marshall, National Marine Fisheries Service, NOAA; 1315 East-West Highway, Silver Spring, MD 20910.
- Fax 301-713-1193; Attn: Kimberly A. Marshall

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Marshall, Fishery Management Specialist, National Marine Fisheries Service, 301-427-8556.

#### SUPPLEMENTARY INFORMATION:

##### Background

In light of experience gained during the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, the NMFS has developed guidance on modifying fisheries closure areas and communicating information regarding those closures to the public during a public health emergency or oil spill characterized by rapidly changing conditions.

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c) (MSA), grants the Secretary of Commerce authority to promulgate emergency regulations to address a public health emergency or oil spill. Section 305(c)(3) states:

(3) Any emergency regulation or interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the

period in which such regulation is in effect. Any emergency regulation or interim measure promulgated under this subsection—

(A) shall be published in the Federal Register together with the reasons therefor;

(B) shall, except as provided in subparagraph (C), remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 186 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Council recommendation for emergency regulations or interim measures, the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis;

(C) that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist, Provided, That the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations or interim measures promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

Pursuant to this statutory requirement, NMFS has historically implemented emergency fishery closures via emergency rules published in the Federal Register that communicate the exact location of the closed area to the public, including specific GPS coordinates. However, the Deepwater Horizon incident demonstrated that the rapidly changing conditions created by an oil

spill or other public health emergency may necessitate frequent modifications to closed areas. In such cases, it may be impossible to make, and provide public notice about, timely modifications of the closed areas by publishing additional emergency rules in the Federal Register. This policy addresses alternate means of modifying emergency fisheries closures and how best to provide sufficient notice of those changes to the public.

#### Objective

The purpose of this notice is to inform the public that, in certain conditions, NMFS may utilize methods other than emergency or interim rulemaking to modify fishery closures established due to an oil spill or public health emergency. The draft policy describes these alternate methods and the circumstances that necessitate their use and offers guidance to the agency with respect to providing adequate notice to the public regarding fishery closure modifications.

#### Authorities and Responsibilities for Closing Areas to Fishing Activity

This policy establishes the following authorities and responsibilities: In an emergency situation that requires closing areas to fishing, the Secretary of Commerce, through NMFS, will implement the closure by publishing an emergency rule in the Federal Register as required by section 305(c)(3) of the MSA, 16 U.S.C. 1855(c). In the case of a public health emergency, the Secretary of Health and Human Services must concur with the Secretary of Commerce's action. If NMFS anticipates that, due to the nature of the emergency, the affected area may change rapidly, the emergency rule will also state the specific procedures and communications methods that will be used to notify the public of any changes to the fisheries closure area (see list below for examples of communications methods). The emergency closure rule will invite public comment on the agency's action and remain in effect until the circumstances that created the

emergency no longer exist and a “notice of termination” has been published in the Federal Register.

#### Modifications to Areas Closed to Fishing Activity

If necessary, the agency will modify the area closed to fishing based on the current location and anticipated movement of the contamination. Wind speed and direction, currents, waves, and other weather patterns are typical factors that may affect the location of the contaminated area. Such modifications will be made in coordination with relevant local, state, and federal authorities and the public will be notified using the mechanisms specified in the emergency rule establishing the closure.

When revising fishery closures, NMFS will strive to announce the revisions with adequate lead time to allow fishermen to come into compliance with the revised closed area.

#### Means of Communication

NMFS will announce the coordinates of the initial fisheries closure area and any subsequent revised coordinates or conditions of that closed area using means that are most appropriate to reach the affected public. These may include, but are not limited to:

- NOAA Weather Radio
- Fishery bulletin
- News/Press Releases
- NOAA Web site updates
- Telephone hotline
- Email lists
- Twitter and text alerts

#### Re-opening a Closed Area and Terminating the Emergency Situation

An area will be reopened when there is no longer a risk of seafood contamination or adulteration as a result of the event that triggered the emergency closure, or when it has been determined that the circumstances that created the emergency no longer exist and the area is deemed safe. NMFS will notify the public that the emergency situation is over and that all closures are terminated by publishing a “Notice of Termination” in the Federal Register.

#### Public Comments

To help determine the scope of issues to be addressed and to identify significant issues related to this draft policy, NMFS is soliciting written comments on this NOA. The public is encouraged to submit comments related to the specific ideas mentioned in this NOA, as well as any additional ideas and solutions that could improve our process for providing information and updates pertaining to fishery closures in the event of a public health emergency or oil spill under rapidly changing conditions.

Authority: 16 U.S.C. 1801 et seq.

Dated: May 28, 2013

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Kara Meckley,  
Deputy Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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